Pollack Industries, Inc. *and* United Paperworkers International Union, Local 1002, AFL–CIO. Cases 7–CA–37638, 7–CA–37638(2), and 7–CA–38114

May 22, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon charges filed by the Union on September 5 and 28, 1995, and January 31, 1996, the General Counsel of the National Labor Relations Board issued a second consolidated amended complaint on March 10, 1997, against Pollack Industries, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although the Respondent filed an answer to the prior consolidated complaint issued on July 25, 1996, it withdrew that answer on April 14, 1997, and stated that it would not file an answer to the second consolidated amended complaint.

On April 25, 1997, the General Counsel filed a Motion for Default Summary Judgment with the Board. On April 29, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the second consolidated amended complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the second consolidated amended complaint will be considered admitted. Here, although the Respondent initially did file an answer to the July 25, 1996 consolidated complaint, the Respondent withdrew that answer on April 14, 1997, and indicated it would not file any further answer. The Respondent's withdrawal of its answer to the consolidated complaint has the same effect as a failure to file an answer, i.e., all allegations in both the consolidated complaint and the second consolidated amended complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Wyandotte, Michigan, has been engaged in the stamping, tooling, and manufacturing of steel and materials for the automotive industry. During the calendar year ending December 1995, the Respondent, in conducting its business operations, performed services valued in excess of $50,000 in States other than the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by the Respondent at its Wyandotte, Michigan facility, but excluding office employees, professional employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated collective-bargaining representative of the unit employees and has been recognized as such by the Respondent. Such recognition has been embodied in collective-bargaining agreements, the most recent of which is effective by its terms from November 11, 1993, through November 10, 1996 (the 1993–1996 agreement). At all material times, the Union, by virtue of Section 9(a) of the Act has been, and is now, the exclusive representative of the unit employees for the purposes of collective bargaining.

The 1993–1996 agreement provides, inter alia, for the deduction of initiation fees and monthly dues from the unit employees' earnings on written authorization of unit employees and the remittance of such deducted money to the Union, for pension contributions to be made on behalf of unit employees, for maintenance of a health insurance program for unit employees, and for the payment of wages to unit employees.

Since about April 1995, the Respondent has, unilaterally and without agreement of the Union, failed and refused to remit initiation fees and dues deducted from the earnings of unit employees and to make pension contributions on behalf of the unit employees. Since about July 1995, the Respondent has deducted moneys

from the earnings of unit employees for the purposes of health insurance, but has, unilaterally and without the agreement of the Union, failed and refused to make required health insurance contributions to the insurance carrier. For the period from about November 27 through about December 4, 1995, the Respondent, unilaterally and without the agreement of the Union, failed to pay unit employees for work performed.

About December 4, 1995, the Respondent ceased operations. About December 15, 1995, and again about December 21, 1995, and January 11, 1996, the Union requested the Respondent to bargain about the effects of the Respondent's closing, to provide certain information to the Union regarding unit employees and the amount of debt owed to unit employees, the Union, and the fringe benefits funds, and to arbitrate pending grievances. This information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about December 15, 1996, the Respondent has failed and refused to bargain with the Union about the effects of the closing, has failed and refused to provide the Union with the requested information, and has failed and refused to process pending grievances with the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the Union, since about April 1995, initiation fees and dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld initiation fees and dues to the Union as required by the 1993–1996 agreement, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent has also violated Section 8(a)(5) and (1) by failing to make contractually required pension contributions on behalf of the unit employees since about April 1995, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.[1]

Having found that the Respondent has also violated Section 8(a)(5) and (1) by failing, since about July 1995, to maintain contractually required health insurance for its unit employees by failing to make the required health insurance contributions to the insurance carrier, despite having deducted moneys from the earnings of the unit employees for that purpose, we shall order the Respondent to restore the employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Having found that the Respondent also violated Section 8(a)(5) and (1) by unilaterally failing, for the period from about November 27 through about December 4, 1995, to pay unit employees for work performed, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Having found that the Respondent also violated Section 8(a)(5) and (1) by failing and refusing to bargain over the effects of the decision to cease operations on December 4, 1995, we shall require the Respondent to bargain with the Union concerning the effects of the closure on its unit employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closure on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

Having found that the Respondent has also violated Section 8(a)(5) and (1) by failing to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information it requested.

Having found that the Respondent has also violated Section 8(a)(5) and (1) by failing and refusing, since about December 15, 1995, to process pending grievances with the Union, we shall order it to do so.

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Pollack Industries, Inc., Wyandotte, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally or without agreement of the Union, failing or refusing to remit initiation fees and dues deducted from the earnings of the employees in the following unit, to make pension contributions on behalf of the unit employees, to make required health insurance contributions to the insurance carrier after deducting moneys from the earnings of unit employees for health insurance, or to pay unit employees for work performed:

> All full-time and regular part-time production and maintenance employees employed by the Respondent at its Wyandotte, Michigan facility, but excluding office employees, professional employees, guards and supervisors as defined in the Act.

(b) Failing or refusing to bargain about the effects of the decision to cease operations.

(c) Failing or refusing to provide necessary and relevant information requested by the Union.

(d) Failing or refusing to process pending grievances arising under the 1993–1996 agreement.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union, with interest, initiation fees and dues required by the 1993–1996 agreement that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations.

(b) Make the contractually required pension contributions on behalf of the unit employees that have not been made since April 1995, and make whole the unit employees for any expenses resulting from its failure to do so in the manner set forth in the remedy section of this decision.

(c) Restore the unit employees' contractually required health insurance coverage and make them whole for any expenses resulting from its failure to make the required health insurance contributions to the insurance carrier since July 1995 in the manner set forth in the remedy section of this decision.

(d) Make the unit employees whole for any loss of earnings, with interest, for its failure to pay them for work performed for the period from about November 27 through about December 4, 1995.

(e) On request, bargain collectively and in good faith with the Union with respect to the effects of the decision to cease operations on December 4, 1995, and reduce to writing any agreement reached as a result of such bargaining.

(f) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision.

(g) Furnish to the Union in a timely manner the information it requested on December 15 and 21, 1995, and January 11, 1996.

(h) Process the pending grievances filed under the 1993–1996 agreement.

(i) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, the Respondent shall duplicate and mail, at its own expense, an exact copy of the attached notice marked ''Appendix''[2] to United Paperworkers International Union, Local 1002, AFL–CIO and to all current and former unit employees employed by the Respondent at any time since September 5, 1995. Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 22, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally or without agreement of the United Paperworkers International Union, Local 1002, AFL–CIO fail or refuse to remit initiation fees and dues deducted from the earnings of the employees in the following unit, to make pension contributions on behalf of the unit employees, to make required health insurance contributions to the insurance carrier after deducting moneys from the earnings of unit employees for health insurance, or to pay unit employees for work performed:

> All full-time and regular part-time production and maintenance employees employed by us at our Wyandotte, Michigan facility, but excluding office employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to bargain about the effects of the decision to cease operations.

WE WILL NOT fail or refuse to provide necessary and relevant information requested by the Union.

WE WILL NOT fail or refuse to process pending grievances arising under the 1993–1996 agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union, with interest, initiation fees and dues required by the 1993–1996 agreement that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations.

WE WILL make the contractually required pension contributions on behalf of the unit employees that have not been made since April 1995, and make whole the unit employees for any expenses resulting from our failure to do so in the manner set forth in a decision of the National Labor Relations Board.

WE WILL restore the unit employees' contractually required health insurance coverage and make them whole for any expenses resulting from our failure to make the required health insurance contributions to the insurance carrier since July 1995 in the manner set forth in a decision of the National Labor Relations Board.

WE WILL make the unit employees whole for any loss of earnings, with interest, for our failure to pay them for work performed for the period from about November 27 through about December 4, 1995.

WE WILL, on request, bargain collectively and in good faith with the Union with respect to the effects of the decision to cease operations on December 4, 1995, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay the unit employees their normal wages for the period set forth in a decision of the National Labor Relations Board.

WE WILL furnish the Union in a timely manner the information it requested on December 15 and 21, 1995, and January 11, 1996.

WE WILL process the pending grievances filed under the 1993–1996 agreement.

POLLACK INDUSTRIES, INC.